Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

REPLY COMMENTS OF FRONTIER COMMUNICATIONS CORPORATION TO SECTION XV

Frontier Communications Corporation[1] ("Frontier") hereby submits the following reply comments to the Federal Communications Commission's ("Commission" or "FCC") request for comment on Section XV of its *Notice of Proposed Rulemaking* addressing areas for expedited reform as a subsection of more comprehensive intercarrier compensation ("ICC") and Universal Service Fund ("USF") reform.[2] These reply comments are limited in scope to those comments filed in response to the proposals and questions found in Section XV of the *NPRM*.[3]

[1] Frontier, which operates a telecommunications network across 27 states, is the largest provider of communications services focused on rural America.

[2] *In re*: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier

The record in response to Section XV of the *NPRM* demonstrates the need for immediate action to determine the access rates for IP-originated voice services terminating on the public switched telephone network ("PSTN"), to eliminate phantom traffic, and to end traffic pumping abuses. While some commenters defend certain types of arbitrage, such as the refusal of IP-originated voice service providers to pay access for just and reasonable termination charges, the same commenters are keenly outraged at other forms of arbitrage—such as traffic pumping—that affect their bottom line. The overall record, however, supports Frontier's belief that the Commission must act to prevent *all forms* of arbitrage.[4]

I. THE RECORD CONFIRMS THAT THE FCC MUST TAKE IMMEDIATE ACTION TO ENSURE THAT IP-ORIGINATED TRAFFIC IS TREATED LIKE ALL OTHER VOICE TRAFFIC FOR THE PURPOSE OF ICC

In response to the question of the proper ICC charges for IP-originated traffic, the record largely breaks down into two categories: those that recognize that IP-originated traffic terminating on the PSTN is functionally identical to traditional voice traffic and, thus, subject to full access charges, and those that attempt to evade payment for use of another's network under the cloak of furthering innovation and reform. Despite the claims made by the latter group, it is clear that ensuring just and fair payment for network use is essential to a controlled ICC reform process as well as for broadband deployment.

Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13 (rel. Feb. 9, 2011) ("*NPRM*").

[3] The Commission set April 1, 2011, as the deadline for comments specifically related to Section XV of the *NPRM* while comments on the remainder of the *NPRM* are due on April 18, 2011. *See* Comment and Reply Comment Dates Established for Comprehensive Universal Service Fund and Intercarrier Compensation Reform Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Public Notice*, DA 11-411 (rel. Mar. 2, 2011). All comments referred to herein were filed in the above-referenced dockets.

[4] Frontier Comments at 3 (filed Apr. 1, 2011) ("Frontier supports the Commission's efforts to correct immediately these intercarrier compensation problems while it contemplates more comprehensive reform of the intercarrier compensation system.").

The FCC wisely chose to include this threshold issue of treatment of IP-originating traffic in its expedited Section XV because it is the lynchpin for all future ICC reform. Verizon asserts that "[b]y establishing a new regulatory regime for VoIP that does not contain implicit subsidies [i.e., by eliminating proper access rates for termination of IP-originated traffic], the Commission can create a gradual and self-effectuating transition away from the current system of implicit subsidies."[5] The record demonstrates that while such an ICC reform transition would indeed be "self-effectuating," it would not be gradual—instead it would result in a near instant elimination of all access payments.

NECA et al. poignantly observe that "if the Commission were to find now that VoIP traffic should be subject to a very low or 'zero' rate, it might as well cease all further ICC reform activity – at that point, the Commission would have effectively ceded the ICC reform field to the arbitrageurs."[6] Windstream agrees, noting that:

> If the Commission were to institute a VoIP-specific regime that offered lower rates, many more companies would assert, as some do today, that more of their traffic is VoIP-originated and therefore the VoIP-specific rate would apply. Carriers terminating the traffic likely would not be able to verify such claims alleging increases in VoIP traffic: Most carriers do not provide any evidence that their traffic is in fact VoIP-originated, and terminating carriers lack the ability to verify these claims.[7]

These comments echo the concerns that Frontier expressed about its inability to identify VoIP traffic and the opportunities for arbitrage created by a system that gives VoIP preferential treatment.[8]

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[5] Comments of Verizon and Verizon Wireless at 11 (filed Apr. 1, 2011).

[6] Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; Western Telecommunications Alliance; Eastern Rural Telecom Association; The Rural Alliance; & The Rural Broadband Alliance at 5 (filed Apr. 1, 2011) ("NECA et al.").

[7] Comments of Windstream Communications at 7 (filed Apr. 1, 2011).

[8] Frontier Comments at 5 ("*Frontier cannot identify whether the traffic it receives originates as either VoIP traffic or traditional switched access traffic nor is there a simple technical solution that would enable it to do so*. Accordingly, the potential for arbitrage abounds should the Commission find that VoIP-originating traffic is not subject to traditional terminating access charges."). *See also* Comments of PAETEC Holding Corp.; Mpower Communications Corp.; U.S. TelePacific Corp.; & RCN Telecom Services, LLC at 33 (filed Apr. 1, 2011) ("Any

Several commenters concurred that IP-originated traffic is indistinguishable from other voice traffic that arrives on a carrier's network for termination.[9] Further, the record contains evidence that false claims on the origination of traffic are already occurring. Hawaiian Telcom reports that, "[b]eginning in at least 2006, certain carriers began rejecting HTI imposition of intrastate and interstate access charges for traffic terminated on HTI's network. Indeed, one carrier refused to pay terminating access for approximately 80 percent of the traffic that it sent to HTI and currently owes HTI in excess of $700,000."[10] This is the type of "self-effectuating" change that the Commission can expect if Verizon's plan of adopting a near-zero payment scheme is adopted. Accordingly Frontier agrees with NECA that "[t]he only sensible path forward – one that is consistent with law, based upon sound policy, and ensures that "reform" does not spiral out of the Commission's control – is to subject VoIP traffic to the same intercarrier compensation rules as all other traffic, pending a more comprehensive reform effort *that is under the Commission's – and not the arbitrageurs' – control*."[11]

CTIA also takes a misguided position, similar to that of its member Verizon Wireless, arguing that "IP-PSTN traffic should be placed under a default bill-and-keep regime now, even as the Commission works to develop a transitional mechanism for other types of traffic."[12] Given some carriers' demonstrated propensity to take advantage of arbitrage opportunities, there

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VoIP-specific rate would perpetuate arbitrage because carriers would have a powerful incentive to claim VoIP status to gain the favorable rate. There is no industry standard way to identify and distinguish VoIP-originated or terminated traffic from other traffic, so there would be no way to audit and confirm these claims. The FCC would be opening the barn door of arbitrage even wider, and shooing the horses out."); Comments of the Independent Telephone & Telecommunications Alliance at 17 (filed April 1, 2011) ("Absent a specific ruling on compensation owed for VoIP traffic, the possibility exists that carriers sending traffic to or from the PSTN will self-declare *all* of their traffic to be VoIP, thereby avoiding the payment of *any* access charges. The terminating LEC has a very difficult time identifying the nature of traffic delivered to it, and indeed VoIP traffic often looks identical to other voice traffic.") ("ITTA Comments").

[9] Comments of Hawaiian Telcom, Inc. at 2 (filed April 1, 2011), NECA et al. Comments at 5-6, ITTA Comments at 17.

[10] Hawaiian Telcom Comments at 2.

[11] NECA et al. Comments at 6.

[12] Comments of CTIA—the Wireless Association at 11 (filed April 1, 2011).

will be no need for a "transitional mechanism" if IP-originating traffic does not have to pay full access charges—the change to bill and keep would be swift, if not immediate. Even a coalition made up of VoIP providers, the Voice on Net Coalition (or "VON Coalition") admits that "[u]ntil the Commission establishes a comprehensive compensation scheme that reflects a unified rate, self-help measures will likely increase. . . ."[13]

CTIA's comments further undermine any opportunity for transition by stating that "the creation of a default bill-and-keep framework for IP traffic would send a strong signal regarding the Commission's commitment to the 'end state' articulated in the *Notice* – the phase out of all mandatory per-minute intercarrier charges."[14] Instead of fully considering what the appropriate "end state" should be through careful consideration of the *NPRM* as a whole, CTIA has effectively prejudged the outcome of the ICC reform process, a conclusion that Frontier strongly opposes. Instead, as Frontier discusses in its April 18, 2011, comments in response to the remaining sections of the *NPRM*, the Commission should not prejudge the ICC transition end state. Instead, the Commission should evaluate the direction and appropriate reform measures remaining after implementing changes to lower the intrastate rates to interstate levels, taking into account the effect of reform on both end-users and carriers.[15]

It is also important to consider the effect that IP-originating access charges have on the universal service fund: if carriers are not allowed to recoup the revenues expected from intercarrier compensation then the carrier will become more dependent upon USF to replace those revenues. CTIA suggests that this is appropriate, stating that "any questions about how to maintain incumbent LEC revenue streams are better addressed, to the extent necessary, in the

[13] Comments of the Voice on Net Coalition at 6 (filed April 1, 2011) ("VON Coalition").
[14] CTIA Comments at 11.
[15] Comments of Frontier at 7-9 (filed April 18, 2011).

universal service context. . . ."[16] Again CTIA would eschew the ICC reform process altogether rather than pay a fair share to terminate calls on the networks of others. NECA points out that this proposal is fundamentally flawed because "future demands on the USF will explode – with the effects being to hinder fair competition and unfairly burden customers who continue to pay legally-billed charges (at higher rates) and bear the ultimate costs of USF contributions."[17] Further, the proposal to grow the USF to avoid payment for IP-originating traffic is fundamentally at odds with the Commission's stated goal of "control[ling] the size of USF as it transitions to support broadband"[18] as well as the Commission's statement that it "intend[s] to avoid sudden changes or 'flash cuts' in [its] policies."[19]

It is not surprising that every state that provided comments on this subject counseled in favor of having IP-originating traffic pay full access charges because, as the Public Utilities Commission of Ohio accurately states, "the costs and benefits shared by the [PSTN] carriers and IP-based network providers for exchange and termination of VoIP telecommunications traffic does not change with the VoIP service classification. In fact, in the Ohio Commission's opinion, there is no economic or legal justification for making any such connection."[20] Indeed eliminating access charges for IP-originating traffic would threaten the integrity of the PSTN. The Iowa Utilities Board underscores this point noting that, "[t]he consequence of functionally equivalent VoIP services not being classified as telecommunications services is the potential loss to public safety, service quality, and other public interest considerations associated with state

[16] CTIA Comments at 13.
[17] NECA et al. Comments at 9.
[18] *NPRM* at ¶10.
[19] *Id*. at ¶12.
[20] Comments of the Public Utility Commission of Ohio at 8 (filed Mar. 31, 2011). *See also, e.g.*, Comments of the Kansas Corporation Commission at 7(filed Apr. 1, 2011) ("The central fact is that an interconnected VoIP communication cannot occur without access to and use of the PSTN.").

commission oversight."[21] Clearly, it is in the public interest for the FCC to find that IP-originating traffic must be treated like other voice traffic in order to ensure an orderly ICC reform process, protect universal service, and preserve the benefits of the PSTN.

Commenters opposing access charges for IP-originating traffic generally posit themselves as "innovators" and argue that such charges would quell innovation when in fact they are using the very networks that allow innovation in the first place. The VON Coalition, for example, argues that "[i]f the Commission were to impose an obsolete access charge regime on interconnected VoIP providers, the results would be anti-consumer, anti-innovation, and anti-investment for IP-enabled voice services."[22] Its rationale for this position is that "VoIP providers, who must also recover their costs, would be forced to pass through these rate increases to their end users. Rates for innovative IP-enabled voice applications would go up, and innovation in and development of new IP-enabled voice applications would be curtailed."[23] This logic fails to recognize that the underlying infrastructure—and basis for enabling VoIP service and other applications—is the carrier's network.

To use the VON Coalition's own words, if IP-originating traffic no longer had to pay access termination charges, then the carriers providing the networks would themselves be faced with significant revenue shortfalls and would have to find a way to "recover their costs" and undoubtedly would also "be forced to pass through these rate increases to their end users." Cost recovery is not idiosyncratic to IP voice providers; the simple fact is that commenters such as the VON Coalition do not care about increases on end users so long as the increase does not apply to *their* end users. As Windstream aptly notes, this position "is driven by the very providers that profit from the reductions while availing themselves of the benefits of interconnection with the

[21] Comments of the Iowa Utilities Board at 6-7 (filed Apr. 1, 2011).
[22] VON Coalition Comments at 4.
[23] *Id.*

[PSTN]."[24] Frontier also notes that these "innovators" position their services as direct competitors to that of the traditional carriers, so allowing these service providers a free ride on other carriers' networks would distort the competitive marketplace for voice services.[25]

None of the "innovation" would be possible without a network to carry those services and networks inherently have costs, despite VoIP providers' attempts to evade them. The most high-tech and beneficial online services would be useless but for the networks that allow customers to use them. Further, as the Iowa Utilities Board states, "[d]eciding the issue along the lines of functional equivalency should resolve concerns that IP innovation and investment is being impacted by regulatory uncertainty over the classification of VoIP services."[26] The regulatory certainty of a fair access payment regime while the Commission considers other intercarrier compensation reforms would help investment in both IP technologies and also in the carriers that provide the service-enabling networks.

II. COMMENTERS RESOUNDINGLY SUPPORT IMMEDIATE ELIMINATION OF PHANTOM TRAFFIC

Nearly every commenter in this proceeding supports phantom traffic reform on an expedited basis—a striking degree of unanimity that should spur the Commission into immediate action. The record contains numerous examples demonstrating that the practice of phantom traffic exists and has resulted in the theft of proper access revenues through deliberate avoidance schemes.[27] Indeed phantom traffic has gotten so prevalent that one IXC "claimed that it needed to engage in

[24] Windstream Comments at 1-2.

[25] *See, e.g.,* Comments of CenturyLink, Inc., at 11 (filed Apr. 1, 2011) (discussing the principles of competitive neutrality.).

[26] Iowa Utilities Board Comments at 10.

[27] *See, e.g.*, CenturyLink Comments at 19; Windstream Comments at 16; Comments of The Toledo Telephone Company, Inc. at 5 (filed Apr. 1, 2011).

this conduct to remain competitive with other IXCs that were similarly avoiding access charges."[28]

The record indicates that while commenters oppose phantom traffic there are variations on the technical methods preferred to end the practice. Many commenters believe that the Commission's proposed rules can be effective with modifications[29] while a number also (and sometimes concurrently) support the US Telecom method of preventing phantom traffic.[30] While Frontier believes that the Commission's method combined with requiring the jurisdiction information parameter ("JIP") is the simplest way to end the practice in a timely manner as explained in our comments,[31] the US Telecom proposal would also be an effective solution. As a company that has lost tens of millions of dollars to this type of theft, Frontier believes that most importantly the Commission must enact procedures immediately to end the practice.[32]

Beyond adding rules to prevent phantom traffic, the Commission must also implement an enforcement mechanism to punish and deter phantom traffic perpetrators. Frontier emphasized in its original comments that "the Commission should explore the scope of all of its enforcement powers . . . in an effort to dissuade would-be defrauders from engaging in this activity."[33] Frontier endorses two solutions in particular: 1) charging phantom traffic the highest possible terminating access rate;[34] and 2) allowing LECs to block unidentified traffic.[35] These two

[28] Windstream Comments at 14 n.27.

[29] *See, e.g.*, Comments of AT&T, Inc. at 1 (filed Apr. 1, 2011); Verizon and Verizon Wireless Comments at 46; CenturyLink comments at 23; Windstream Comments at 15.

[30] *See, e.g.*, CenturyLink Comments at 21, Verizon and Verizon Wireless Comments at 46.

[31] Frontier disagrees with T-Mobile's statement that the JIP need not be included because it is unreliable. Comments of T-Mobile at 13(filed Apr. 1, 2011). Frontier has found that including the JIP is a key method of determining the proper jurisdiction for wireless calls.

[32] Frontier also supports the proposal of Windstream and CenturyLink to extend the principles of the *T-Mobile* decision to allow ILECs to demand commercial negotiations with CLECs in order to ease problems associated with CLEC-based phantom traffic. Windstream Comments at 17; CenturyLink Comments at 22.

[33] Frontier Comments at 11-12.

[34] Comments of Bright House Networks Information Services, LLC, at 5 (filed Apr. 1, 2011); NECA et al. Comments at 26.

methods could be used in tandem: where a carrier can determine the originating carrier but not the originating jurisdiction it could charge the highest possible access rate, but in those circumstances where all identifying information has been stripped out, the terminating carrier would be relieved of its obligation to terminate the call. The combination of these two methods would provide effective disincentives to bad actors that take advantage of phantom traffic schemes.

III. CONCLUSION

The record in this proceeding demonstrates that ending ICC arbitrage opportunities is a critical first step towards overall ICC reform. Eliminating these opportunities will allow the Commission to truly size the scope of ICC reform and then make the best policy decisions with complete information. Further, such Commission action will allow companies like Frontier to have the certainty necessary to continue investing in broadband deployment in furtherance of the Commission's ultimate deployment goals. For the foregoing reasons, Frontier requests that the Commission act immediately to declare that VoIP traffic must pay full terminating access charges and to end phantom traffic.

Respectfully submitted,

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[35] Public Utility Commission of Ohio Comments at 12.